BAIL SLIP

The Accused was directed to be released on bail by the order of this Court dated 1.11.2000 and made in Crl.M.P.No.7501/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 581 OF 2000

Karunakaran .. Appellant/Accused.

- Vs -

State rep. by
Inspector of Police
R-2, Kodambakkam Police Station
Madras. .. Respondent /Complainant.

Appeal preferred against the conviction and sentence passed by the learned IV Addl. Sessions Judge, Chennai, made in S.C. No. 322 of 1999 dated 3.7.2000 as stated therein.

For Appellant : Mr. V.Gopinath, SC, for
Mr. C.Rajan

For Respondent : Mr. M.K.Subramanian, GA (Crl. Side)

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charge and awarded life imprisonment by the IV Addl. Sessions Judge, Madras, in S.C. No.322 of 1999, has broughtforth this appeal.

2. The short facts necessary for the disposal of this appeal could be stated thus :-

The deceased is the wife of the appellant. They got one child aged twelve years. They were all living at Kodambakkam, Madras. P.W.s 1 to 3 were the neighbours. P.W.4 is the father of the deceased. It was the usual practice of the appellant to spend the entire salary without giving any money for family expenses.

3. At about 12.45 a.m. on the date of occurrence, namely, 12/13.5.97, the appellant called his wife for sharing the bed to which course she refused. Immediately the appellant got wild, went into the kitchen, took a can of kerosene and poured the same over the deceased and set fire to

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

her. Later he also made an attempt to put out the fire. P.W.s 1 to 3 witnessed the occurrence. Immediately after putting out the fire, the appellant took the injured to the Kilpauk Government Hospital where P.W.5, the doctor, was on duty. The doctor recorded the statement of the injured, who was admitted with burn injuries, in the accident register. The accident register copy pertaining to the injured stands marked as Ex.P-1.

4. At about 3.45 a.m., the Sub-Inspector of Police, Kodambakkam Police, who was on duty, on receiving the intimation from Kilpauk Government Hospital, proceeded to the hospital and recorded the statement of the deceased, which stands marked as Ex.P-5 on the strength of which a case came to be registered by the police against the appellant in crime No.824/97 under Section 307 IPC. Ex.P-4 is a copy of the printed first information report and the same was despatched to court. Subsequently on receiving intimation about the death of the deceased, the crime was altered to one under Section 302 IPC and Ex.P-6 is the express report in the altered crime and the same was also forwarded to the court.

5. P.W.7, on receiving a copy of the printed first information report, took up investigation in the crime. He proceeded to the scene of occurrence where he prepared an observation mahazar, Ex.P-8, and drew a rough sketch, Ex.P-9. The M.O.s 1 to 4 were recovered from the scene of occurrence. The investigating officer conducted inquest over the dead body of the deceased in the presence of panchayatadars and prepared inquest report, Ex.P-10. After the inquest, a requisition was given to the doctor for conducting autopsy.

6. On receipt of the requisition, P.W.6, Civil Surgeon and Tutor in Forensic Medicine, Kilpauk Government Hospital, conducted autopsy on the dead body of the deceased and found the following :-

> "Epidermal and Dermo epidermal burns seen over the face, neck, chest, abdomen (except lower abdomen) both upper and lower limbs fully, back of the trunk including both buttocks."

The doctor issued Ex.P-2, the post-mortem certificate, opining that the deceased died on account of extensive burn injuries.

7. P.W.7, in the meantime, continuing with his investigation, arrested the accused on 13.5.97 at about 7.15 a.m. before his house. The accused gave a confession statement and the same was recorded in the presence of witnesses. Subsequently the accused was sent to court for remand. On completion of the investigation, the final report was filed before the court. The case was committed to the court of sessions and necessary charges were framed.

8. In order to substantiate the charges levelled against the accused, the prosecution examined seven witnesses and relied on eleven exhibits and four material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances found in evidence of the prosecution witnesses. He denied them as false. No defence witness was examined. After hearing the arguments advanced by either side and on scrutiny of the materials, the trial court found the appellant guilty as per the charge and awarded life imprisonment, which is being challenged in this appeal.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9. Learned senior counsel appearing for the appellant inter alia made the following submissions. In the instant case, P.W.s 1 to 3, who according to the prosecution were eye witnesses to the occurrence, turned hostile. P.W.4, who was examined to prove the motive part, which was attributed to the accused, also turned hostile and thus what was available for the prosecution was only the two documents, namely, Exs.P-1 and P-5. So far as Ex.P-1, the copy of the accident register is concerned, the same came into existence at the instance of the deceased while she made the statement to P.W.5, the doctor attached to Kilpauk Government Hospital. The copy of the said document was not given to the defence. Hence the document could not have come into existence as putforth by the prosecution. It was filed at the time when the matter was being tried by the court. Apart from that, the said document also did not contain the signature of the doctor, P.W.5, and the said doctor has also admitted the same. In such circumstances, the contention of the prosecution that it came into existence on 13.5.97 itself cannot be accepted, but the trial court has placed much reliance on the said document. The other document, available for the prosecution was Ex.P-5, the complaint given by the deceased to the Sub-Inspector of Police. According to the prosecution, the statement was given by the deceased to the Sub-Inspector of Police, where she has narrated the entire prosecution story. The learned senior counsel would further contend that as the document has not been proved in a manner known to law (i.e.) the person who recorded the same was not summoned and examined to prove the document and the other person, who gave the statement has breathed his last, the said document should have been rejected outright. Therefore, the said document also cannot be accepted as evidence. In the above circumstances, the learned senior counsel would contend that there is no evidence available on which the lower court could have found the accused guilty, but the lower court got carried away on the above two documents, which have no evidentiary value, and this was a case where the prosecution did not lack evidence, but had absolutely no evidence at all and the trial court instead of rejecting the prosecution case outright, has erroneously found the appellant guilty and, hence, the appellant is entitled for acquittal.

10. On the above contentions, this Court heard the learned Government Advocate (Crl. Side) appearing for the State and also perused the recorded evidence, both oral and documentary.

11. It is not in controversy that the deceased Santhakumari died on account of the burn injuries. The same stands established through the evidence of the doctor, P.W.6, who conducted autopsy and who issued the post-mortem certificate, Ex.P-2. The appellant has not disputed the cause of death of the deceased either before the trial court or before this Court. On the medical evidence this Court holds that the deceased, Santhakumari, died on account of burn injuries.

12. In order to substantiate the accusation made against the appellant that he poured kerosene and set fire to his wife, the prosecution examined P.W.s 1 to 3 as eye witnesses. All the three witnesses have turned hostile. The only witness, who was expected to speak about the motive part, P.W.4, the father of the deceased, also did not support the prosecution case. Hence, what was available for the prosecution was only the two documents, namely, Exs.P-1 and P-5, which were heavily relied on by the prosecution and accepted by the trial court to sustain the conviction. In the instant case, so far as Ex.P-1 is concerned, it was

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

filed by the prosecution pending trial. The copy of the said document was not even given to the defence to make the accused know about the contents of the same. It was also brought to the notice of the court that the document did not contain the signature or certificate of the doctor who issued the same. Under such circumstances, when the investigating officer was questioned about the same, he has answered that the documents, namely, Ex.P-1, the inquest report and two other documents, were sent to court on 13.5.97 itself, but a perusal of the document, Ex.P-1 would clearly indicate that it does not contain the court seal. The fact that it did not contain the signature of the doctor; a copy of the said document was not given to the defence; it has been produced before the court pending trial and that the document also does not have the court seal and hence could not have come to court along with the other documents, would clearly indicate that the document, Ex.P-1, has been roped in in order to strengthen the case of the prosecution and, hence, it has got to be rejected without giving any importance at all.

13. In so far as the other document, Ex.P-5 is concerned, according to the prosecution it was a statement given by the deceased at the hospital to the Sub-Inspector of Police, who recorded the said statement. It is pertinent to point out that there were only two persons, who could speak about the said document, one was the person who gave the statement and who has since died and the other person is the person, who recorded the said statement. Though it was admitted by the prosecution through the evidence of P.W.7 that the police officer, who recorded the said statement, Ex.P-5, was well in service, he was not examined for the reasons best known to the prosecution. Hence, this document, Ex.P-5 remained unproved and, hence no evidentiary value could be attached to it.

14. Once the documents, namely, Ex.P-1 and Ex.P-5 are rejected as the same were not proved in a manner known to law, the prosecution had nothing to offer, which could be called evidence in the eye of law. But the trial court, without taking into consideration the above aspects of the matter, has simply taken for granted that those statements were made by the deceased and found the appellant guilty, which in the opinion of this Court has got to be set aside and the appellant is entitled for acquittal.

15. In the result, the conviction and sentence imposed on the appellant by the trial court are set aside and the appellant is acquitted of the charge framed against him. The criminal appeal is allowed. It is reported that the appellant is on bail. Bail bonds executed by him shall stand cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

GLN

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1) The IV Addl. Sessions Judge, Chennai.
2) -Do- Thro' The Principal Sessions Judge, Chennai.
3) The 17th Metropolitan Magistrate, Chennai.
4) -do- through the Chief Metropolitan Magistrate, Egmore, Chennai.
5) The District Collector, Chennai.
6) The Director General of Police, Chennai.
7) The Public Prosecutor, High Court, Madras.
8) The Superintendent of Central Prison, Vellore.
9) The Inspector of Police, R-2, Kodambakkam Police Station, Madras.
+ 2 CCs to Mr.C. Rajan, Advocate SR NO 34789

CRL. A. NO. 581 OF 2000
18.08.2005

AKM(CO)
GP/23.8.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/